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March 31, 2000

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W., Counter TW-A 325
Washington, D.C. 20554

RE: VoiceStream Wireless Corp.'s Comments in response to MCI WorldCom, Inc.'s Petition for Expedited Declaratory Ruling Regarding the Process of Agreement Pursuant to Section 252(i) of the Communications Act and Section 51.809 of the Commission's Rules

Dear Ms. Salas:

Enclosed please find for filing an original plus seven copies of VoiceStream Wireless Corp.'s Comments in the above-captioned proceeding.

Also enclosed is an additional copy of the Comments to be date-stamped and returned to our offices via the awaiting messenger.

Thank you for your assistance. Should you have any questions, please contact the undersigned.

Sincerely,

Sana D. Coleman

Douglas G. Bonner
Sana D. Coleman

Enclosures

cc: David A. Miller, Esq.
Chris R. Johnson
Carl J. Hansen

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MCI WORLDCOM, INC.	)	**CC Docket No. 00-45**
	)	
Petition for Expedited Declaratory Ruling	)	
Regarding the Process for Adoption of Agreements	)	
Pursuant to Section 252(i) of the Communications	)	
Act and Section 51.809 of the Commission's Rules	)	

COMMENTS OF VOICESTREAM WIRELESS CORP.

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March 31, 2000

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Pursuant to Section 252(i) of the Communications	)	
Act and Section 51.809 of the Commission's Rules	)	

To the Commission:

COMMENTS OF VOICESTREAM WIRELESS CORP.

VoiceStream Wireless Corp. ("VoiceStream"), by its attorneys, hereby submits these Comments in response to the revised petition of MCI WorldCom, Inc. ("MCI WorldCom") in the above-captioned proceeding.[1/] VoiceStream supports MCI WorldCom's revised petition urging the Federal Communications Commission (the "Commission") to reaffirm the scope of a carrier's

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1/ VoiceStream Wireless Corp. ("VoiceStream") and its affiliates construct and operate PCS systems throughout the United States using Global System for Mobile Communications ("GSM") technology. On February 14, 2000, the Commission granted transfer of control applications filed by VoiceStream and Omnipoint Corporation ("Omnipoint"). *In re Applications of VoiceStream Wireless Corporation or Omnipoint Corporation, Transferors, et al.*, File Nos. 0000016354, *et al.* DA 99-1634 (rel. Feb. 15, 2000). On February 24, 2000, the shareholders of VoiceStream, Omnipoint and Aerial Communications ("Aerial") overwhelmingly approved the mergers between VoiceStream and Omnipoint, and between VoiceStream and Aerial. The VoiceStream and Omnipoint merger closed shortly thereafter. The VoiceStream/Aerial transaction remains pending. When both mergers are completed VoiceStream and its affiliates will own licenses to provide service to an addressable market of 220 million people, and will be the largest GSM operator worldwide.

rights to adopt a previously approved interconnection agreement under Section 252(i) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("96 Act").

In the *Local Competition Order*, the Commission properly concluded that "it will assist the carriers in determining their respective obligations, facilitate the development of a single, uniform legal interpretation of the Act's requirements and promote a pro-competitive, national policy framework to adopt national standards to implement section 252(i)."[2/] The Commission is therefore authorized to declare, in accordance with MCI WorldCom's revised petition, that: (1) requesting carriers under Section 252(i) are not required to seek state commission approval of previously approved agreements; (2) agreements adopted pursuant to Section 252(i) are effective "on the date of notice of adoption" to the incumbent local exchange carrier ("ILEC"); and (3) an ILEC has limited grounds upon which it may object to a carrier's request to adopt a previously approved interconnection agreement. The Commission must reaffirm its policies in this regard to ensure vibrant competition, and to thwart on going anti-competitive tactics used by ILECs to unjustifiably delay market entry of competitive carriers. Moreover, a uniform national standard will eliminate the needless differences in state and ILEC proceedings governing the implementation date of agreements adopted under Section 252(i) of the 96 Act. The

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[2/] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 at ¶ 1309. (1996) (*"Local Competition Order"), aff'd in part and vacated in part sub nom., Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *petition for cert. granted,* Nos. 97-829, 97-830, 97-831, 97-1097, 97-1099, and 97-1141 (U.S. Jan. 26, 1998) (collectively *Iowa Utils. Bd. v. FCC), aff'd in part and remanded, AT&T Corp., et al v. Iowa Utils. Bd. et al.,* 119 S.Ct. 721 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996); Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-265 (rel. Aug. 18, 1997), *further recons. pending; see also* 47 C.F.R.§§ 51.801(b), 51.803(b). .

Commission in accordance with its authority under the 96 Act is the only regulatory authority with the jurisdiction to establish fair, appropriate, and pro-competitive regulations to implement the substantive requirements of Section 252(i).[3/]

I. INTRODUCTION

Congress adopted Section 252 of the 1996 Act to promote healthy competition in local telecommunications service markets by requiring ILECs to facilitate the entry of competing carriers. Specifically, Section 252 permits telecommunications carriers to obtain interconnection with ILECs according to agreements formed by: (1) voluntary negotiations between the carriers; (2) mediation by state commissions; or (3) arbitration by state commissions.[4/] In addition, Section 252(i) provides an additional mechanism for establishing interconnection -- adoption of an interconnection agreement previously approved by the state commission.[5/]

The Section 252(i) opt-in mechanism is intended to level the playing field for new entrants who typically lack the prodigious bargaining power of ILEC monopolies. ILECs also have an oft-recognized incentive to delay competitive entry. As such, Section 252(i) opt-in agreements have increased importance as more and more state commissions have approved

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[3/] *See AT&T Corp., et al. v. Iowa Utils. Bd. et al.,* 119 S.Ct. 721 (1999) (stating that "[t]he FCC has general jurisdiction to implement the 1996 Act's local competition provisions. Since Congress expressly directed that the Act be inserted into the Communications Act of 1934, and since the 1934 Act already provides that the FCC 'may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act,' 47 U.S.C. 201 (b), the FCC's rulemaking authority extends to implementation of 251 and 252."

[4/] 47 U.S.C. § 252 (a) and (b).

[5/] Section 252(i) requires local exchange carriers to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." *See* 47 U.S.C. 252(i).

arbitrated and negotiated interconnection agreements available to competing carriers. This opt-in mechanism alleviates the need for time-consuming and expensive arbitration or negotiation proceedings because previously approved interconnection agreements need not be negotiated prior to submission for state commission approval.[6/] Further, a party seeking interconnection pursuant to Section 252(i) "need not make such requests pursuant to the procedures for initial section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis."[7/] Otherwise, the "non-discriminatory, pro-competitive purpose of Section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251."[8/]

Notwithstanding the clear requirements of ILECs to facilitate competitive entry under the opt-in mechanism of Section 252(i), many ILECs' conduct with regard to Section 252(i) requests remains anti-competitive. ILECs often leverage their monopoly bargaining power to override the clear intent of Congress and the clear prescriptions of the Commission with respect to Section

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6/ "Any interconnection agreement adopted by negotiation or arbitration shall be submitted to the State commission." *See* 47 U.S.C. § 252 (e)(1); *see also Local Competition Order* at ¶ 1321 (indicating that carriers "seeking interconnection, network elements, or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial section 252 requests.") *See also, Global NAPS, Inc., Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell-Atlantic-New Jersey, Inc.* CC Docket No. 99-154, FCC 99-199 at n. 12 (rel. Aug. 3, 1999).

7/ *Local Competition Order* at ¶ 13221. An expedited process for Section 252(i) opt-ins would necessarily be substantially quicker than the time frame for negotiation, and approval, of a new interconnection agreement since the underlying agreement has already been subject to state review under Section 252(e).

8/ *Id.*

252(i) requests under Section 51.809 of the Commission's rules.[9/] As a result, competitive entrants suffer from exorbitant costs and unreasonable delays in gaining entry into local markets. ILECs cannot continue to forestall the adoption process. Balkanized state rules regarding Section 252(i) requests only add to the woes of new entrants. Establishment of uniform national regulations for Section 252(i) requests is therefore required. Such regulation should rely on the fact that many states already have adopted "effective upon filing" rules with respect to the adoption of previously approved agreements, which closely resemble the relief by the MCI WorldCom petition. In this light, the declaratory ruling requested of the Commission is not a new or unchartered concept, but rather a concept that has already been implemented in some states.

II. DISCUSSION

A. ILECs Cannot Continue to Forestall or Circumvent the Opt-in Adoption Process Established Under Section 252(i)

MCI WorldCom's experiences in seeking to adopt an entire agreement previously approved by a state commission are all too familiar. MCI WorldCom shares accounts of its experiences with Ameritech in which Ameritech has apparently refused to honor MCI WorldCom's Section 252(i) request because MCI WorldCom allegedly failed to follow the respective state commission adoption processes for the subject agreements. Other ILECs engage in similar stonewalling tactics. For example, GTE, as a matter of policy declines to make an adopted, previously approved agreement effective for the adopting carrier prior to Commission

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9/ 47 C.F.R. § 51.809.

approval.[10] These tactics can cost competing carriers a great deal of time and money, and cause serious delay in market entry for competing carriers. The Commission should not allow ILECs to continue to place unauthorized conditions on a requesting carriers right of adoption.

B. ILECs Cannot Continue to Manipulate Section 51.809 of the Commission's Rules to Delay a Valid Adoption Request

Section 51.809(a) of the Commission's rules provides that an ILEC must "make available without unreasonable delay to any telecommunications carrier any individual interconnecting service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to Section 252 of the Act, upon the same rates, terms and conditions as those provided in the agreement."[11]

The Commission's rules further establish limited exceptions to the rights of carriers to opt-in to an interconnection agreement. Specifically, in cases where an ILEC is able to prove that the costs of providing a particular interconnection, service, or element to the requesting carrier are greater than the costs of providing it to the carrier that originally negotiated the agreement. Additional exceptions arise where an ILEC can prove that the provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible,

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[10] *See, e.g., Request to Adopt Interconnection Agreement, UT-980370, by GTE Northwest Inc. and ICG Telecom Group, Inc.*, Docket No. UT-990388 (filed Aug. 30, 1999) at ¶33. The language in paragraph 33 of the Interconnection Agreement provides: " Effective Date. *This Agreement will be effective upon approval by the Commission in accordance with Section 252 of the Act.* If this Agreement or changes or modifications thereto are subject to approval of a regulatory agency, the "effective date" of this Agreement for such purposes will be the date of such approval. Such date shall become the "effective date" of this Agreement for all purposes, *except that ICG shall not submit LSR orders for resold services or unbundled network elements under the rates, terms, and conditions of this Agreement before the tenth business day after the effective date of the Agreement.*" (first and second emphasis added.)

[11] 47 C.F.R. § 51.809(a).

or, in the "pick and choose" context, that a requesting carrier has failed to adopt legitimately related terms and conditions.[12/]

Accordingly, an ILEC has limited grounds for objecting to the adoption of previously approved agreements, and bears the burden of proof in making such objections. State commissions charged with reviewing ILEC challenges must do so expeditiously. VoiceStream supports MCI WorldCom's recommendation for the Commission to provide guidance on how state commissions should expedite proceedings involving objections to adoptions.[13/] VoiceStream also supports adopting a measure to provide that if a state determines that an ILEC has failed to meet its burden of proving its claim under Section 51.809(b), then the effective date of adoption will be retroactive to the date of notice of the adoption. Such measures may discourage frivolous claims intended to delay competitive entry. Other protective measures also may be necessary to eliminate ILEC abuse of claimed exceptions to Section 252(i) requests.

In addition, VoiceStream supports a declaration that if a carrier seeks to adopt an entire agreement, only the specific provisions challenged by the ILEC pursuant to Section 51.809(b) ought to be considered by a state commission.[14/] The remaining terms and conditions would then be honored by the ILEC as adopted by the requesting carrier. Such an approach would prevent ILECs from using Section 51.809 to anti-competitively delay or prohibit market entry.

[12/] 47 C.F.R. § 51.809(b).

[13/] *MCI WorldCom Revised Petition* at 21.

[14/] *Id.* at 23 (citing favorably the procedures implemented by the California Public Utilities Commission).

C. The Commission Must Reaffirm its National Policy under Section 252(i) to Thwart the State-by-State Balkanization of Interconnection Adoption Procedures.

The Commission has already concluded that national standards to implement Section 252(i) will promote competition.[15/] The Commission's finding has become increasingly more relevant as certain states, through the years, have either unnecessarily intruded upon Section 252(i) requests or allowed ILECs to frustrate efficient adoption of previously approved agreements. The substantive rules do vary from state to state and are too inconsistent. MCI WorldCom aptly delineates these varying state approval procedures in its petition.[16/] In many cases, as cited by MCI WorldCom, the state procedures are not at all clear, and where the procedures are clear, they are often burdensome, time consuming, and costly for new entrants.

On one end of the spectrum, state commissions require regulatory approval for carriers to adopt previously approved agreements. These approval processes can take up to ninety (90) days in uncontested proceedings.[17/] Other states also have instituted thirty (30) day approval processes for adoption of previously approved agreements. These state approval processes amount to nothing more than fruitless rubber stamping exercises that delay competitive entry and load state commission dockets with proceedings that should not be very ministerial.

15/ *Local Competition Order* at ¶ 1309.

16/ *MCI WorldCom Revised Petition* at 5-10.

17/ *See, e.g.,* Missouri Public Service Commission rule providing that the effective date of an adopted agreement is the date when the state commission signs the order or ninety (90) days after its submission.

On the other end of the spectrum, states like Florida and Ohio permit adoption agreements to be effective upon filing.[18/] The process for entry in these states is efficient and predictable. Permitting a requesting carrier's adoption under Section 252(i) to be effective upon filing therefore is not a novel or experimental concept, but a "tried and true" process that is working successfully in some states. Adoption of similar rules on a national level will bring a measure of predictability that requesting carriers need to effectively implement their business plans.

[18/] *See, e.g., Interconnection, Resale, and Unbundling Agreement Between GTE Florida Incorporated and KMC Telecom II, Inc.,* (approved by the Florida Public Service Commission in Docket No. 980892-TP, effective upon the date of filing)(Oct. 9, 1998); *see also, Interconnection Agreement for a Wireless System Under Sections 251 and 252 of the Telecommunications Act of 1996 by and between Ameritech Information Industry Services and AirTouch Cellular*, Case No.99-431-TP-NAG (effective following automatic approval by the Ohio Public Utility Commission) (April 2, 1999).

III. CONCLUSION

VoiceStream enthusiastically supports MCI WorldCom's revised petition in the above-captioned proceeding, and urges the Commission to make the declarations requested in the petition to promote healthy competition under the purview of Section 252(i).

Respectfully submitted,

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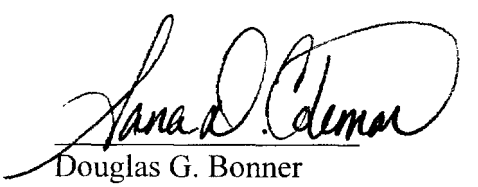

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March 31, 2000

CERTIFICATE OF SERVICE

I, Barbara Dixon, do hereby certify, that on this **31st** day of **March, 2000**, I have caused to be delivered by hand, a true and correct copy of VoiceStream Wireless Corp.'s Comments in response to MCI WorldCom, Inc.'s Petition for Expedited Declaratory Ruling Regarding the Process of Agreement Pursuant to Section 252(i) of the Communications Act and Section 51.809 of the Commission's Rules upon the following:

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